IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.422 OF 2005

Kumud S. Gajjar (since deceased) by:
1a. Gp. Capt. Subodh Jamnadas Gajjar
(retd.) & Ors. : Petitioners

V/s.

The Union of India & Ors. : Respondents

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Mr.R.P.Behere with Mr.Pankaj J. Das for the petitioners.

Mr.Rajiv Chavan, Special Counsel, with Ms Akhila Kaushik for respondent Nos.1 & 2.

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CORAM : H.L.GOKHALE & S.R.DONGAONKAR,JJ.

DATE : MARCH 20, 2006.

ORAL ORDER (Per Gokhale, J.)

1. Rule, returnable forthwith.

Ms Kaushik appears and waives service of rule on behalf of respondent Nos.1 & 2.

Heard by consent.

2. This petition is filed by the owner of a property to get back a particular flat which was hired by respondent no.1, Union of India, for respondent No.2 i.e. Headquarters of Western Naval Command. The petition was

filed by the original landlady who was 74 years old when the petition was filed. She has since passed away and it is her heirs who are brought on record.

3. The concerned flat situated at Sion, Mumbai, was hired by the respondents for war purposes in the year 1942. Thereafter, for some reason or the other, in spite of a number of request letters by the original petitioner to the then Minister of Defence, Prime Minister and a variety of authorities, the flat is not being released. From the record, what we find is that on 3.5.1989 a letter was sent by the Naval Headquarters that as anticipated, the flat may come up for dehiring by the end of 1989-90. A list of flats to be dehired was referred to in that letter and it was stated that the petitioner's flat had moved on to sr. no.32 from its earlier position at sr. no.44 in November 1986. Thereafter, there is another letter dated 7.1.1991 addressed to the petitioner which states that the petitioner may appear before a Committee of the Defence Ministry. This was in pursuance of an order passed by the High Court. Nothing has happened since then. It is difficult to accept that all these years, it was not possible for the Naval authorities to make appropriate arrangement and shift the officer whoever was occupying the concerned flat. In the letter dated 3.5.1989, it is stated that environmentalists are raising objections to

Naval construction for housing and, therefore, delay is being caused. Navy has developed a large establishment in South Mumbai which is known as "Navy Nagar" and surely, if the flat was hired for war purposes in the year 1942, the purpose is over long back and still the Naval authorities are continuing to occupy it, in spite of the letters sent by the Naval headquarters. It is, in these circumstances, that the petition was required to be filed in December 1994. As stated above, after filing the petition, the original petitioner has passed away and it is her heirs who are prosecuting this petition further.

4. A reply has been filed by the Chief Staff Officer (Personnel and Admn.) on behalf of respondent No.2. It is the same old story saying that they do not have adequate accommodation in Mumbai. Surely, the Naval authorities ought to have kept in mind that they had hired the flats of the citizen and they must return the same when the purpose of hiring is over. Now another list is shown to us wherein we are told that the petitioner’s flat is at sr. No.28 and one flat at sr. no.22 is to be dehired in July 2007. That is also in view of an order passed by a Division Bench of this Court after noticing that the Central Government had assured that the flat will be vacated and that the officer occupying the concerned flat was likely to be shifted out of Mumbai by then. This was

with a view not to cause inconvenience to Naval authorities also. This was an order passed by a Division Bench on 30.1.2006 in Writ Petition No.1455 of 2005 in M/s.K.C. Chheda & Co. v. The Union of India, to which one of us (Gokhale, J.) was a party. We are now told that the said flat is at sr. no.22 and the petitioner's flat is at sr. no.28. In this view of the matter, we asked the learned counsel for the respondents as to when the Officer putting up in the present flat is likely to be shifted out of Mumbai and we are told that no definite statement can be made. We are told that he will retire sometime in the year 2014. Surely, the petitioners cannot be made to wait all this long. To permit the respondents to continue till then will mean compounding the wrong on the part of the respondents. To say that they needed the flat for one purpose in the year 1942 and then continue over there for some other reason, in spite of creating a huge establishment for Naval officers in the city is totally unjustified.

5. Even so, having noted that flat no.22 which was hired on 25.2.1942 is to be vacated in July 2007, in pursuance of the order of this Court, we direct the respondents to vacate the concerned flat of the petitioner, being flat no.3 in Vishesh bldg., Sion, Mumbai--400 022, by the end of July 2007, if not earlier. The respondents have now

adequate time to shift the present Officer if he is to be retained in Mumbai. They can find out an accommodation for him by the end of that period in Navy Nagar inasmuch as surely, some Officers are bound to be transferred by that date and the Officer staying in the flat of the petitioner could be shifted out there.

6. Mr.Chavan has drawn our attention to two unreported judgements of a Division Bench of this Court (R.M.S. Khandeparkar & V.M.Kanade, JJ.), one in Writ Petition No.1250 of 1993 (M/s.Chemox Exports Imports Pvt. Ltd. v. Union of India & Ors.) and the other in Writ Petition No.1389 of 1993 and Writ Petition No.1390 of 1993 (Kaikobad Byramjee and Son (Agency) Private Limited & Anr. v. The Union of India & Ors.), all decided on 29.8.2005. The decision in M/s.Chemox Exports Imports Pvt. Ltd. is on the footing that the petitioners therein must move under the Rent Control Act for getting the premises. From the judgement, what we find is that M/s.Chemox Exports Imports Pvt. Ltd. purchased the concerned flat in November 1983 knowing fully well that it was hired by the respondent. Besides, no assurance to vacate it was given to the petitioner therein. In the present matter, in the letter dated 3.5.1989, there is an element of assurance that it will be vacated in a reasonable time. So was it in M/s.K.C. Chhedia & Co.’s case (supra). The order in

the petition of Kaikobad Byramjee & Son (Agency) Pvt. Ltd. is similar to M/s.K.C. Chheda & Co.'s case in the sense that the respondents are directed to take a decision to vacate expeditiously, though with a difference that time limit is not specified.

7. Here what we find is that the present flat was hired for war purposes in the year 1942. The purpose is over and surely, in view of the assurance of the respondents given in the year 1989, the landlady cannot be told that she should go to the rent Court to get the occupants evicted. We do not expect this attitude from the Union of India which has to act as a model tenant and abide by the terms under which they hired a particular flat under their sovereign power. We are told that this order will mean that those at sr. Nos.23 to 27 will also have to be vacated. They are also flats hired in 1942 and it is high time that the respondents vacate them particularly, if there is any assurance given to them. We, however, do not say anything more since any other particulars which may be relevant concerning them are not before us.

8. Hence, Rule is made absolute by directing the respondents to vacate the flat by the end of July 2007, unless it is vacated earlier by the present occupant. No order as to costs. Needless to say that in the meanwhile,

the respondents will abide by the terms of occupancy.

H.L. GOKHALE, J.

S.R.DONGAONKAR, J.